



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

May 30, 2018

REVIEW OF NOMINATING PETITION

James Osak
Candidate for District Court Judge, 43rd District, Regular Term/Incumbent Position

NUMBER OF VALID SIGNATURES REQUIRED: 200 signatures.

TOTAL FILING: 400 signatures.

RESULT OF FACE REVIEW: 394 valid signatures; 6 invalid signatures.

Total number of signatures filed:		400
Signer jurisdiction errors (incomplete or incorrect jurisdiction; jurisdiction not located in electoral district):	-	5
Signer date error (dated after circulator):	-	<u>1</u>
Face valid signatures:	=	394

TOTAL NUMBER OF SIGNATURES QUESTIONED UNDER CHALLENGE: The challenger, District Court Judge Keith Hunt, challenges the entire filing due to alleged defects in the heading of Mr. Osak's nominating petitions.

ANALYSIS OF CHALLENGE: The challenge relies on *Stand Up for Democracy v Board of State Canvassers*, 492 Mich 588 (2012), to argue that candidate nominating petitions must strictly comply with requirements governing the designation of the judicial office for which the candidate seeks nomination or election, the term ending date, and the type size of the candidate's name and identifying information. In *Stand Up for Democracy*, the Michigan Supreme Court held that the doctrine of substantial compliance did not apply to a statewide referendum petition where the form of the petition prescribed by MCL 168.482 mandated a particular type size. The challenge also relies upon a 2016 Michigan Court of Appeals case where the Court removed a candidate from the ballot for omitting the date of the primary election. *Aiello v Sabaugh, et al.*, unpublished opinion of the Court of Appeals, issued June 21, 2016, Docket No. 333461. The *Aiello* Court held that a candidate must strictly comply with the form requirements of MCL 168.544c. Relying upon these cases, the challenge alleges that the heading is defective, rendering the entire petition invalid.

The heading of Mr. Osak's nominating petition indicates that he is "a candidate for the office of **Judicial / Regular Position / Incumbent / Jan. 2025, 43rd** (District, if any)." Note that there is only a single position to be elected for the 43rd District Court in 2018: one regular term incumbent position.

The Michigan Election Law requires non-incumbents who are seeking election to the office of District Court Judge to include the designation of office in the heading of their nominating petitions in certain circumstances. Under the Michigan Election Law,

(2) Nominating petitions filed under this section are valid only if they clearly indicate for which of the following offices the candidate is filing, consistent with section 467c(4):

- (a) An *unspecified* existing judgeship for which the incumbent judge is seeking election.
- (b) An *unspecified* existing judgeship for which the incumbent judge is not seeking election.
- (c) A new judgeship.

* * *

(4) *In a primary and general election for 2 or more judgeships where more than 1 of the categories in subsection (2) could be selected*, a candidate shall apply to the bureau of elections for a written statement of office designation to correspond to the judgeship sought by the candidate. The office designation provided by the secretary of state shall be included in the heading of all nominating petitions. Nominating petitions containing an improper office designation are invalid.

MCL 168.467b (emphasis added). To satisfy the requirement to provide “a written statement of office designation,” the Bureau of Elections publishes an instructional memo¹ which explains:

OBTAINING INFORMATION ON APPROPRIATE OFFICE DESIGNATION: Michigan election law requires that in instances where a candidate for Court of Appeals Judge, Circuit Court Judge, District Court Judge, Probate District Court or Probate Court Judge seeks election in a district where there are a combination of “new” positions, “incumbent” positions and/or “non-incumbent” positions to fill, the candidate must “apply to the Bureau of Elections for a written statement of office designation to correspond to the judgeship sought by the candidate.” The designations listed in the following charts are provided to fulfill this information requirement. (See *Petition Signature Requirements and Office Designations* below.)

The memo includes the following office designations: Regular Term – Incumbent Position; Regular Term – Non-Incumbent Position; Partial Term – Incumbent Position; Partial Term – Non-Incumbent Position; or New Judgeship. These designations are not required by statute, but are descriptions created by the Bureau of Elections for use when a combination of different types of positions will appear on the ballot for a particular court.

First, the challenge essentially argues that Mr. Osak be disqualified from appearing on the ballot because he wrote “Regular Position/Incumbent” instead of “Regular Term/Incumbent Position” in the heading. However, the heading of the petition is sufficient in that it clearly indicates that he is a candidate for the only judicial position to be elected in 2018 in the 43rd District, the incumbent position expiring in January 2025 (i.e., a regular 6-year term).

Second, the space for the “Term Expiration Date” in the heading of the petition is not required by MCL 168.544c, but instead is included on the petition form approved by the Director of Elections to ensure that election officials, candidates and petition signers are informed of the precise position a candidate seeks when multiple positions are available (for example, when both

¹ Available at https://www.michigan.gov/documents/sos/Regnoninc_Jud_510731_7.pdf.

regular term and partial term school board positions are to be elected simultaneously). In these circumstances, the description of the office sought is adequate to enable other candidates and voters to ascertain which position Mr. Osak intends to contest. The challenge incorrectly suggests that Mr. Osak “was not allowed to identify a term expiration date unless he was running for a partial term.”²

Finally, a late-filed “addendum” to challenge asserts that the heading is defective because it “must be typed.”³ However, the statutory requirement reads, “[t]he name, address, and party affiliation of the candidate and the office for which petitions are signed shall be *printed* in type not larger than 24-point.” MCL 168.544c(1) (emphasis added). The challenger cites no legal authority to support his position, and the Board has not disqualified a candidate merely because he or she filed nominating petitions with a handwritten heading.

Staff recommends that the challenge be rejected in its entirety.

FINAL RESULT: 394 valid signatures.

STAFF RECOMMENDATION: Determine petition sufficient.

² Challenge filed by Judge Hunt on April 30, 2018, p. 3.

³ Addendum filed by Judge Hunt on May 11, 2018, p. 1, ten days after the challenge deadline elapsed on May 1, 2018.